



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

HC ELC NO. 35 OF 2018 (OS)

IN THE MATTER OF A CLAIM FOR TITLE TO LAND BY ADVERSE POSSESSION OVER THE PARCEL OF LAND KNOWN AS KERICHO/EAST SOTIK NUMBER 203

WESLEY KIPYEGON BOR1ST PLAINTIFF

GLADYS CHEROP SIGEI2ND PLAINTIFF

NANCY CHEPKOECH RONO3RD PLAINTIFF

WILLIAM KIPLANGAT TORONGEI4TH PLAINTIFF

MITEI CHERUIYOT JOSEPH5TH PLAINTIFF

RICHARD ARAP MUTAI6TH PLAINTIFF

NAUMY CHELANGAT BIRIR 7TH PLAINTIFF

PETER KIPKORIR NGENO.....8TH PLAINTIFF

JULIUS CHERUIYOT RONO9TH PLAINTIFF

-VERSUS-

RICHARD PARES (Being sued as the Administrator of the estate of the late KIPKORIR ARAP CHEBOGOIYO)1ST DEFENDANT

MUTAI PARES (Being sued as the Administrator of the estate of the late KIPKORIR ARAP (CHEBOGOIYO)2ND DEFENDANT

THE LAND REGISTRAR BOMET3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL4TH DEFENDANT

RULING

Introduction

1. This Ruling is in respect of the Plaintiffs application dated 29th August 2018 in which the Plaintiffs seek the following orders:

1. Spent

2. That the court be pleased to stay of execution of the decree herein and any subsequent orders of the Court dated 29th August, 2018 in this matter pending the hearing and determination of this application;

3. That this Honorable Court do review and set aside the orders dated 29th August, 2018.

4. That the status quo herein be maintained pending the hearing and determination of this application.

5. That the Court do make any other or further orders in the interest of justice.

6. That the costs of this application be provided for.

2. The application is based on the grounds stated on the face of the Notice of Motion and the supporting affidavit of Rogers Mugumya, Advocate sworn on the 29th August 2018.

3. Even though the main order sought is a review or setting aside of the court's ruling and orders made on 29th August 2018, the provisions cited in the Notice of Motion have nothing to do with review or setting aside.

4. However, in line with Order 51 rule 10 (1) and (2) of the Civil Procedure Rules and Article 159 (2) (d) of the Constitution, I shall not dwell on the technical inadequacies.

5. In his supporting affidavit, Mr. Mugumya has explained that he had travelled to his home in Uganda and that is why he was late in filing his submissions on behalf of the Applicants.

6. The application is opposed by the Defendants' Grounds of Opposition filed on 23rd October 2018 in which the defendants state that the failure to file the submissions on time was intentional and the application for review is an afterthought which is intended to delay the determination of this case.

7. The application was canvassed by way of written submissions and both counsel filed their submissions.

Issue for determination

8. The only issue for determination is whether the Applicants have met the conditions for review of the orders dated 29th August 2018.

Analysis and Determination

9. Order 45 Rule 2 (1) of the Civil Procedure Rules provides as follows:-

1. Any person considering himself aggrieved-

a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of judgment the court which passed or made the order without unreasonable delay.

10. Counsel for the Respondents has submitted that Mr. Mugumya's affidavit does not explain why he failed to file his submissions from 18th June 2018 upto 28th August 2018. Furthermore, he does not state whether the Ruling delivered on 29th August, 2018 contains any error apparent on the face of the record. In essence it is his submission that the Applicants have not raised any grounds to justify a review of the orders made on 29th August, 2018.

11. On the other hand, counsel for the Applicants has submitted that the court ought to take into account the report of the DCIO, Bomet which was brought to the attention of the court while this application was pending and which was filed in court on 26th March 2019. The said report was not available at the time the Ruling was made although it has a bearing on this case as it touches on the manner in which the titles to the suit property were acquired. This therefore constitutes a new and important matter or evidence which, after the exercise of due diligence, could not be produced by the applicants at the time when the Ruling was delivered. Secondly, counsel for the applicants has submitted that Bomet High Court Succession Cause No. 35 of 2015 in which the applicants' titles were issued is yet to be determined as there are pending proceeding for revocation of Grant.

12. For the foregoing reasons, I am inclined to review the orders made on 29th August, 2018. I therefore find merit in the application and I allow it. Consequently, I set aside the order dismissing the application for injunction and order that the status quo be maintained pending the hearing and determination of the suit herein.

13. The Applicants shall however bear the costs of this application.

Dated, signed and delivered at Kericho this 31st day of May, 2019.

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J.M ONYANGO

JUDGE

In the presence of:

1. Miss Chepkirui for Mr. Mugumya for the Plaintiffs
2. 1st Defendant present in person
3. Court assistant - Rotich